

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of:

Creation of a Low Power Radio Service

MM Docket No. 99-25

To: The Commission

COMMENTS OF STATION RESOURCE GROUP

Station Resource Group ("SRG") hereby submits its Comments in response to the Further Notice of Proposed Rule Making ("FNPRM") captioned above.

SRG is an alliance of 45 leading public radio noncommercial educational ("NCE") broadcasters. SRG members operate some 168 stations and produce the majority of public radio's national programming. SRG works for funding, regulatory and legislative policies that advance public radio services nationwide. SRG's goal is to help its member stations translate their public service vision to real, effective, and sustainable service.

INTRODUCTION

SRG believes that LPFM stations can make a valuable contribution to public broadcasting and supports the Commission's efforts to develop an LPFM service that complements the existing public radio system. As one SRG member noted, "LPFM is new and folks are coming to it with totally fresh perspectives. A lot of experimentation is going on – and lots of creativity. . . . Our station offered to help the new station do some fund-raising and to give them unlimited access to our extensive classical music library. “

SRG supports the Commission's proposal to extend the construction period for LPFM stations to three-years, to give LPFM stations greater ability to make "minor changes" in authorized facilities, and to relax overly restrictive limitations on the ability to transfer control of LPFM licenses. SRG opposes a change in the rules with respect to overall eligibility, or the capacity for organizations to assemble multiple LPFM stations. These changes will undermine the integrity of the LPFM service and its emphasis on localism and experimentation. It will lead to speculative activities and the use of LPFM stations as "super-translators" and fill-in stations for full-power stations.

As discussed in the remainder of these Comments, SRG has serious concerns about some of the proposals under consideration that have the potential to cause serious harm to the public radio service and SRG addresses these areas below.

The overall effect of this proceeding should be to enhance the public service provided by *all* NCE stations, including LPFM, full-service and NCE translator stations, and that new opportunities for LPFM stations should not be extended at the expense of the public radio system, which has taken decades to build and has been funded with substantial public dollars from the national, state, and local levels. Or, in the words of the President of New Hampshire Public Radio, "We are all – public radio and LPFM stations – here to serve the public. I believe judgments should be made on the basis of public service."

DISCUSSION

I. The Relationship Between LPFM and Full-Service Stations.

LPFM stations were created as a secondary service, subject to interference from full-service stations. Report and Order, 65 FG 7616 (2000). The FNPRM does *not* propose to change this relationship by granting LPFM stations primary status. See FNPRM, ¶¶ 30,38.

The FNPRM does, however, propose to relax Section 73.809 of the Commission's Rules to require full-service stations that modify their facilities to accept interference from authorized second- and third-adjacent channel LPFM stations, even when such interference occurs at the heart of the full-service station's service area (i.e. within its "city grade" or 70 dBu contour).

This proposal assumes that full-service NCE stations modify their facilities for voluntary reasons and that they should be required to accept any interference they choose not to avoid. That assumption is inaccurate. Full-service NCE stations modify their facilities for a host of reasons, most of which are not within their control. Their transmitter sites may be developed for nonbroadcast purposes. They may be evicted because the landlord wishes to make room for DTV facilities or more profitable commercial tenants. Institutional licenses may be required to locate a site to another portion of school property. If tower loads are increased by other occupants, public radio stations, often the lowest-paying tenant, may be the first to be asked to move.

Interference constraints may restrict the area in which a transmitter site can be located. Economic constraints may dictate what sites are feasible. In short, full-service stations rarely modify in order to "move in" or "encroach" on an LPFM station deliberately, See FNPRM, ¶38.

The FNPRM proposal to permit interference with a station's protected service area is at odds with established Commission policy, which generally seeks to protect full-service FM channel assignments from such interference:

The Commission's technical requirements promote spectrum efficiency by protecting licensed NCE facilities from impermissible interference within their service areas. ...Underlying these interference standards... is the basic premise that licensed facilities will provide adequate service throughout their protected service area. Prohibited overlap is presumptively disfavored because it results in a diminished protected service area.

Education Information Corporation, 12 FCC Rcd 6917, 6920 (1997).

The FNPRM proposal reverses this traditional presumption by *favoring* prohibited second- and third-adjacent channel overlap within the protected service area of a full-service station. Such a proposal is squarely inconsistent with Section 73.509 of the Commission's Rules, and with the Commission's approach to requested waivers of that rule. See, e.g. Saddleback Community College, 11 FCC Rcd 11938 (1996)(waiver of received overlap is not warranted unless the benefit of increased NCE service "heavily outweighs the potential for interference in very small areas."); Letter to Simon Frech, (Media Bureau, December 6, 2004)(requested waiver of received second-adjacent channel interference denied, even when the upgrade would increase population served by 552% and area served by 218%).

Many of the issues raised by the FNPRM involve issues of classification of radio services, but interference is classless. It is determined by physics, not politics. The Commission's interference methodology predicts that objectionable interference will occur, or that it will not. Consequently, the Commission's approach to predicted interference should be consistent. Either Section 73.809 should be maintained in its current form and LPFM stations should be allowed to receive but not cause prohibited contour overlap within the protected service area of a full-service station, or, alternatively, if Section 73.809 is revised to permit both caused and received interference, Section 73.509 and the Commission's policy concerning second- and third-adjacent overlaps should be revised accordingly. It would be arbitrary to permit LPFM stations to cause prohibited second- and third-adjacent overlap, but to require Class D stations, a quite similar class of secondary station, to cause no interference whatsoever. See File No. BPED-20040614AFZ (minor modification of Class D station WHHS, granted subject to the condition that WHHS will not be permitted to operate if it causes "any objectionable interference" to second-adjacent channel stations). What is needed is a simple interference standard that can be

applied to all situations involving interference to protected service areas. That standard could either be the virtually zero tolerance policy now in place or a more lenient policy that permits certain levels of *de minimus* overlap in limited circumstances, such as minor modifications of existing stations.

The spectrum reserved for noncommercial use has been filled on a contour-protection basis that is “maxed out” in most locations. Fortunately, even in these congested circumstances, there is often a technical solution when there are interference issues. There will, however, be interference situations in which there are not viable technical solutions that will satisfy both a LPFM and full-service licensee. The Commission notes that to date only one LPFM station has been forced off the air due to a full-power station’s need to modify its facilities. FNPRM, ¶30. SRG urges the Commission not to adopt a policy change that will compromise the integrity of the next full-service public radio station forced to modify its facilities. Such a policy change would not be in the greater public service interest. The better solution is to liberalize the Commission's policy with respect to displaced LPFM stations by waiving major change rules to permit LPFM to relocate to other frequencies or change communities of license rather than go dark.

II. LPFM Stations versus Translators

SRG’s members have a strong interest in the outcome of the Commission’s decisions regarding LPFM stations and FM translators.

Translators are an integral part of the delivery system infrastructure used by public radio, particularly to reach rural or geographically isolated populations. Of the 3,897 FM translator and booster stations licensed by both commercial and noncommercial licensees, 1 out of every 6 is associated with a public radio service supported by federal funds distributed by the

Corporation for Public Broadcasting ("CPB"). One out of every three of the 393 licensees supported by CPB uses translators in their delivery configuration – over 660 translators in 45 states. In these systems, translators not only serve an audience, but feed other translators. For example, in Utah, 9 licensees operate 60 translators, in Alaska 31 licensees operate 56 translators, and in Colorado 24 licensees operate 54 translators. In many states, public radio uses translators to build “daisy-chain” delivery systems – putting even one of these translators at risk threatens the entire delivery configuration. Many translators are passing along not only the primary service, but the Radio Reading Service (RRS), carried on an SCL channel, as well. At one point, Senator McCain and other representatives on the Hill considered legislating third-adjacent protection to these public radio stations, the RRS was considered so critical.

While much of public radio’s delivery system has been built out over the past 35 years, there are still portions of the country that either have no public radio service at all or that are served by only one of several distinctive formats that public radio now offers. Licensees around the country waited years for the most recent translator window to open up. Vermont Public Radio is just such an example and as a result of the window will now put a 22 translator system in place to serve that state. Similarly there are dozens of other public radio licensees which are still in the process of designing and developing their system and securing the resources needed to make their services available to the communities they seek to serve. Public radio is mandated by Congress to provide universally available, freely accessible, broadcast services – translators have been and continue to be fundamental to completing charge.

In SRG’s poll of these licensees, the costs associated with constructing translators ranged from around \$10,000 to \$30,000 in more complex situations. Assuming an average cost per translator at the low end of this range, the existing network constitutes a start-up investment,

primarily in equipment, of over \$10 million. Funds for this investment were obtained through the federal government's Public Telecommunications Facilities Program, state and educational authorities, and local dollars raised in communities where listeners sought access to a public radio service.

Part of the Commission's plan to protect full-power FM services when it created the LPFM service was to place LPFM stations and FM translators on an "essentially equal footing" with respect to protecting each other from interference. FNPRM, ¶29. The Commission now proposes to revisit the "co-equal" status of *all* LPFM and translator stations because of the extraordinary volume of applications filed in the March 23, 2003 filing window for translators on non-reserved channels.

SRG is sympathetic to the frustration of LPFM advocates with the outcome of the translator filing window. Approximately 13,000 applications were filed in the window, 8,000 of which remain pending. FNPRM, ¶23. Although the Commission does not provide precise figures, it appears that a large percentage of the pending applications may have been filed by two applicants who filed for speculative reasons.¹ Such conduct frustrates the Commission's goals of encouraging localism and diversity of ownership and viewpoint. To address this problem, the Commission froze the processing of pending applications and invited comment on whether to dismiss all these applications and give LPFM stations "primary" status over authorized translator stations and subsequently filed translator applications. The freeze further delays the plans of many public radio licensees who waited for a translator window for years, filed applications in

¹ The Emergency Petition for Freeze of Pending FM Translator Applications filed by Prometheus Radio Project and other on March 9, 2005, maintains that three individuals filed over 4,000 translator applications in the name of two corporations and created a third corporation to market the sale of construction permits for unbuilt stations.

good faith, and are now discouraged about the Commission's capacity to handle the processing associated with these applications.

SRG certainly believes that the Commission has the authority to preserve the integrity of its processes by denying applications or revoking licenses of applicants who have abused Commission rules or obtained licenses through fraudulent or illegal processes. SRG does not believe that authorized translator stations and innocent applicants should be punished along with the wrongdoers. The preferable approach is to adjust the remedy to the problem by designating for a hearing those applications that may have been filed for illegal or abusive purposes. Dismissal of those applications, which apparently constitute a large percentage the applications pending, would thus create significant new opportunities for LPFM station.

More importantly, SRG believes that the Commission has misdiagnosed the issue which led to the current situation. That issue is not whether LPFM stations should be given "priority" over existing translators, but whether the Commission's filing procedures encourage abuse and unnecessarily prejudice one class of "co-equal" stations over another. When the Commission created the LPFM service, it also instituted a window filing system for translator and full-service NCE stations. SRG, in its filings with the Commission at that time, flagged its concern that the proposed filing system could be abused, and urged the Commission to limit the number of applications any applicant or party in interest could file in a given window. The Commission rejected that proposal. ("We do not believe that such limits were needed to prevent speculative applications, because other aspects of our new procedures, including the window procedure itself ... serve to discourage speculation." Reexamination of the Comparative Standards for Noncommercial Educational Applicants, 15 FCC Rcd 7386 (2000).) Had reasonable limits been

adopted on the number of applications that could be filed in a given window, the current crisis would not exist.

The Commission's failure to open regular filing windows exacerbates the problem. Although the window filing and point system procedures adopted for full-service NCE stations and NCE translators were adopted in 2000, they are yet to be applied. Delays of this magnitude stimulate demand and turn an otherwise orderly process into a stampede. Unless filing windows are opened regularly, they will necessarily, if inadvertently, favor one class of applicants over the other. The argument that every new translator "takes the place" of a new LPFM station, See FNPRM, ¶ 31, would have less force if the Commission had opened another LPFM window before its March 2003 translator window, or if the Commission regularly opened filing windows for all classes of service.

The proposal advanced by the FNPRM – giving LPFM stations "priority" over translators – has potentially severe, and highly inequitable, consequences for translator licensees and applicants who have complied with Commission rules and constructed translator stations in accordance with FCC authorizations. To give new LPFM stations priority over "authorized FM translator stations," as suggested in FNPRM, ¶ 33, would jeopardize millions of dollars of public investment and raise serious questions under Section 312 of the Communications Act. As a general rule, licenses and permits may not be revoked, absent some form of misconduct.

While it is possible to mitigate the effects of changing the relative status of LPFM stations and translators by "grandfathering" existing translator stations, grandfathering would not eliminate all the problems that a change in priority would create. Class wars are more easily started than controlled or ended. If translators and LPFM stations were no longer placed in an equal footing, every translator station authorized would be subject to displacement by an LPFM

applicant. NCE stations and NCE funding sources would be reluctant to invest in new translator stations, even when translators would provide a valuable new NCE service.

Translators, as secondary services, may be forced off the air by new or modified full-service stations that would receive interference from the translators. In these cases, a secondary service must give way to a larger, protected service. The distinction between translators and LPFM is distinguishable from this situation, however. Both translators and LPFM stations are secondary services, although ones with different power limitations. Translators may operate with up to 250 watts (at 32 meters HAAT, east of the Mississippi 102 meters HAAT, west of the Mississippi). See Section 74.1235 of the Commission's Rules. By contrast, LPFM 100 stations operate at a maximum of 100 watts (at 30 meters HAAT), LPFM 10 stations at 10 watts (at 30 meter HAAT). Granting blanket "priority" to LPFM stations over translator stations would permit a 10 watt or 100 watt LPFM station to displace a 250 watt translator. Thus, in many cases, the proposed LPFM station would deprive listeners of an existing NCE service with much greater coverage. That result is contrary to long-established Commission policy that curtailment of an established broadcast service is not in the public interest. See *Hall v. FCC*, 237 F.2d 567, 572 (D.C. Cir. 1956).

SRG also believes that it would be unfair to dismiss the pending translator applications of those who filed in good faith. Applicants that followed prescribed FCC procedures are entitled to be evaluated by those procedures, particularly when those procedures include safeguards that have not yet come into play. Mutually exclusive translator applicants will have an opportunity to bid at auction or be evaluated under the point system. Both auction procedures and the point system include rights to file petitions to deny that provide an opportunity to weed out unqualified applicants.

As the Commission recognizes in the FNPRM, translators and LPFM stations each play an important role in providing new NCE broadcast service. The entire translator service should not be placed at risk because a few unscrupulous applicants have exploited defects in the FCC filing procedures. The solution is not to throw the translator baby out with the filing window bath water, but to modify filing window procedures so as to give both LPFM and translator applicants more equitable access to available spectrum. SRG believes that the Commission would be better served by addressing the root problems – its filing procedures and those who abuse them – rather than the ancillary problem of the relative status of two secondary services.

In general, SRG believes the Commission should preserve its initial approach of placing LPFM stations and FM translators on an "essentially equal footing" with respect to protecting each other from interference. Changing these standards poses a serious threat to the public radio delivery system. It speaks to the frustration of LPFM operators at the expense of full-service public radio stations. It is a sideways solution to a series of problems rooted in filing windows and processing issues at the FCC, and a maxed out spectrum situation that confronts every one of the 2,500 noncommercial licensees – LPFM, public radio, and religious broadcasters alike.

III. Filing Windows

Although the FNPRM does not propose changes in the filing window procedures, it recognizes that the frequency with which filing windows are opened is relevant to the issues considered. The Commission pledges to open "a national filing window for new NCE stations and for major changes in authorized NCE facilities," FNPRM, ¶40, as soon as the backlog of NCE groups can be processed. SRG applauds this commitment.

There has not been an opportunity to file an application for a new full-service or translator station on a reserved channel since April 2000. The Commission has been promising

for too long that it will open such a window without acting on that promise. Further delays only exacerbate the likelihood of the same filing frenzy as the one considered in this FNPRM. If there is anything on which the parties to this proceeding can agree, it is that no good purpose would be served by replicating that catastrophe.

Respectfully submitted

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